

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Matter of

Review of the Commission's
Regulations and Policies
Affecting Investment in the
Broadcast Industry

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MM Docket No. 92-51

ORIGINAL
FILE

To: The Commission

REPLY COMMENTS OF BTMI, INC.

A majority of the comments filed in this proceeding which addressed the issue of a security interest in a broadcast license urged the Commission to issue a ruling that a third party lender may take a security interest in a broadcast license to the same extent that the Commission has permitted a security interest in the stock of a licensee, namely, subject to a requirement that the approval of the Commission be obtained prior to any assignment of license or transfer of control. These comments documented that (a) a security interest in a broadcast license would not be inconsistent with the Communications Act or the legislative interest of Congress as evidenced by the Act's legislative history,^{1/} (b) the Commission's policies regarding security interests are a major impediment to attracting capital to the broadcast industry,^{2/} and (c) policy considerations favor

1/ See Comments of Media Venture Partners and Comments of O'Melveny & Myers.

2/ See Comments of American Security Bank, Comments of Santarelli, Smith & Carro, and Comments of BTMI, Inc.

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the provision of a limited security interest in broadcast licenses.^{3/}

Of those parties submitting comments in opposition to the provision of a limited security interest in broadcast licenses, the lengthiest filing was made by Tak Communications, Inc. (hereinafter referred to as "TakCom").^{4/} BTMI, Inc. hereby responds to the assertions made by TakCom in support of the proposition that as matter of policy, the Commission should not recognize a limited security interest in a broadcast license.

TakCom argues that ". . . from a policy standpoint the negative consequences of a reversal in current policy far outweigh the largely speculative benefits presented by the financial institutions seeking such a reversal." Comments at ii. In opinion of TakCom, "if it ain't broke, don't fix it." BTMI

^{3/} See Comments filed by Arent, Fox, Kintner, Plotkin & Kahn on behalf of various licenses of broadcast stations, Comments of Greyhound Financial Corporation, and Comments of Sheppard, Mullin, Richter & Hampton.

^{4/} Although TakCom is currently involved in a court proceeding involving the New Bank of New England and six other banks which have claimed a security interest of all of TakCom's real and personal property, including its FCC licenses (see New Bank of New England, N.A. v. Tak Communications, Inc., 138 B.R. 568, 70 RR 2d 810 (W.D. Wis. March 23, 1982)), TakCom asserts that its "comments here are not part of an effort to preserve a favorable court ruling, but instead reflect the views of a party that has been immersed in this issue for some time as a licensee and a borrower." Comments at 6. This assertion is belied by the extensive discussion in TakCom's Comments concerning retroactivity of a policy allowing a security interest in a licensee -- "if the current policy is reversed," TakCom pleads, "the new policy should apply only to credit or security agreements entered into after the effective date of the new policy." Id. at iii.

submits that the opposite is true: the public interest is disserved by the Commission's failure to recognize a security interest in broadcast licenses and indeed, there is an urgent need to ease the "credit crunch"^{5/} experienced by new entrants to broadcasting and existing broadcasters. To paraphrase TakCom, the policy is broken and there is a compelling need to fix it.

TakCom disputes the comments submitted by financial institutions in response to the Hogan & Hartson petition that the current "credit crunch" for broadcast acquisitions could be ameliorated by a ruling allowing security interests in broadcast licenses. Comments at M. According to TakCom (a company which is in the midst of litigation with seven bank creditors), "broadcast lenders have substantial protection of their interests through other forms of security." Id. at 20. The comments filed in this proceeding by financial institutions (e.g., American Security Bank and Greyhound Financial Corporation) directly contradict TakCom's assertion. Greyhound Financial Corporation pointed out that as a consequence of recent decisions arising out

5/ Commissioner Duggan, in his separate statement accompanying the Notice of Proposed Rulemaking and Notice of Inquiry in this proceeding, underscored the urgent need for the Commission to review its policies that affect the ability of broadcast companies to attract capital:

Access to capital is the single greatest barrier to entry in the broadcasting field today. Commercial markets for broadcast loans have virtually gone dry in the last 12 months, and I believe it is right for us to consider possible actions by the Commission to ease this credit crunch.

of bankruptcy proceedings (e.g., New Bank of New England, N.A. v. Tak Communications, Inc., supra) which have relied on statements made by the Commission, "lenders are understandably reluctant about making loans to communications entities that hold Commission licenses," and accordingly, "FCC licensees are being afforded access to less financing at less favorable rates than other borrowers." Comments at 12-13.

Rather than acknowledge the public policy implications resulting from the bankruptcy courts' erosion of protections to secured broadcast lenders, TakCom argues that "[c]laims that these protections are eroded in the bankruptcy context are more properly directed to Congress, as the author of the federal bankruptcy law (as well as the [Communications] Act." Comments at 21. The bankruptcy court rulings, however, underscore the public policy justification supporting the grant of a limited security interest in a broadcast license. As American Security Bank pointed out in its Comments, "[w]ithout adequate security in the bankruptcy as well as the general context, it makes it difficult, if not impossible, for banks to extend financing and still comply with the banking regulations requiring loans be made in a safe and prudent manner." Comments at 5 (emphasis added).

TakCom takes the position that "[a] security interest in an FCC license would give the secured party an immutable right to influence the licensee's operations, undercutting the licensee's independence." Comments at 21-22. This is simply not so. As BTMI pointed out in its Comments, the grant of a security

interest in a broadcast license would in no way undermine the FCC's policy, embodied in Section 310(d) of the Communications Act, in ruling on the qualifications of parties involved in assignments and transfers and in ensuring that licensees do not abdicate control. The creation of a security interest in a license would not diminish the responsibility of the licensee to operate the station in accordance with Commission policies and the terms of its license. By ruling that a licensee can give creditors a security interest in a broadcast license, the Commission will empower licensees of stations with the ability -- if they so choose -- to take advantage of more attractive financing arrangements.

TakCom reasserts two arguments advanced by the Motion Picture Association of America in its comments on the Hogan & Hartson petition, namely, that "the current policy on security interests serves the public interest in two important respects: (1) it encourages program suppliers to extend credit to broadcast stations pursuant to long-term programming agreement; and (2) it encourages continuity of service by giving secured and unsecured creditors incentives to work with broadcasters in default, rather than forcing them off the air." Comments at 23. With respect to the encouragement of program suppliers to extend credit to broadcast stations, the existence of a security interest in a broadcast license will not undermine the broadcaster's ability to secure credit from other parties such as program creditors. As pointed out by Media Venture Partners, security interests are a

common feature of non-broadcast businesses (particularly where real estate is concerned), and the existence of security interests in other areas does not generally undermine the non-broadcast business's ability to secure credit from other suppliers. Comments at 10-11. Moreover, creditors such as program suppliers can adopt other means to protect their interests (e.g., requiring advance payments or allowing for termination of business in the event bills remain unpaid for a certain period of time). Id.

Finally, TakCom contends that by not allowing a lender to take a security interest in a broadcast license, secured and unsecured creditors would be given an incentive to work with broadcasters who are in default, rather than forcing them off the air. However, as BTMI pointed out in its Comments, lenders have a vested interest in keeping broadcast facilities as going concerns. State and Federal court filings to seek the involuntary assignment of a broadcast license to a receiver or trustee are not only fraught with uncertainty but are also often imprudent from a practical standpoint. Once it becomes public knowledge that a broadcast facility is in financial trouble, advertising revenues decrease significantly and the value of the station plummets. Moreover, as noted in the Comments of O'Melveny & Myers, collateralized loans often afford borrowers relatively greater managerial latitude than unsecured loans -- "if a broadcast borrower encounters financial difficulties, an unsecured lender will be much more tempted to inject itself in

the business affairs of the license in an attempt to avoid a loss than a lender whose loan is fully secured." Thus, contrary to TakCom's assertion, allowing a limited security interest would lessen the need for lender involvement in a broadcast licensee's management." Comments at 19-20.

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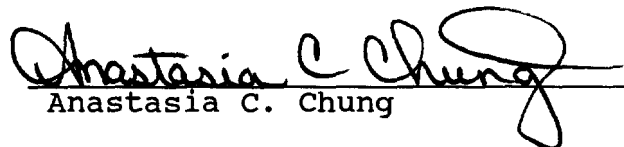
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July 13, 1992

CERTIFICATE OF SERVICE

I, Anastasia C. Chung, a secretary in the law firm of Verner, Liipfert, Bernhard, McPherson and Hand, Chartered, do hereby certify that the foregoing "Reply Comments of BTMI, Inc." was mailed first-class, postage prepaid, this 13th day of July, 1992, to the following:

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